17.02.2026
Sl. No.22
Ct. No.14
gd

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA/19100/2025
MOZAFFAR RAHAMAN SARKAR
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. M.N. Roy
Mr. G. Haldar
Mr. B. Nandy
...for the Petitioner.

Mr. Sm. Samim Ullah
...for the State.

1. Affidavit-of-service filed on behalf of the petitioner is taken on record.
2. By the present writ petition, the petitioner seeks direction upon the respondent authorities to refund the overdrawn amount of Rs.1,79,443/- together with interest.
3. The petitioner contends that he joined as an Assistant Teacher in Hazrapukur F.Primary School, Kumarganj North Circle on 16th August, 1991. The petitioner retired from service on superannuation on 31st January, 2024 as Head Teacher of the said school. After his retirement the petitioner was directed to deposit the overdrawn salary of Rs.1,79,443/- for processing the pension papers. Accordingly, the petitioner deposited the aforesaid amount on 16th April, 2025. The petitioner claims that the direction to

deposit the overdrawn salary after retirement is impermissible in law. Hence, this writ petition.

4. Mr. M.N. Roy, learned Advocate for the petitioner relying on the decision of the Hon'ble Supreme Court in ***State of Punjab & Ors. versus Rafiq Masih (White Washer) & Ors.*** reported in ***(2015) 4 SCC 334*** submits that it is impressible in law to recover the overdrawn amount from the employee after his/her retirement.

5. Despite service, none appears on behalf of the State.

6. Mr. Sm. Samim Ullah, learned Advocate, who usually appears on behalf of the State-respondent is requested to appear in this matter. The appearance of Mr. Samim Ullah be regularised by the competent authority.

7. Learned Advocate for the petitioner is directed to serve a copy of the writ petition along with its annexure upon Mr. Samim Ullah, learned Advocate for the State.

8. Mr. Samim Ullah, learned Advocate for the State leaves the matter to the discretion of this Court.

9. Upon hearing the learned advocates for respective parties, the only issue which falls for consideration is whether the respondent authorities were justified to direct the petitioner to deposit the overdrawn amount after his retirement.

10. In this regard, it would be apposite to reproduce the relevant paragraph no.18 of the decision in *Rafiq Masih (supra)* as hereunder:

> *"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
>
> *(i) Recovery from the employees belonging to Class II and Class IV service (or Group C and Group D service).*
>
> *(ii) the retired Recovery from employees, or the employees who are due to retire within one year of the order of recovery.*
>
> *(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
>
> *(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
>
> *(v) In any other case, where the (v) court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

11. It is found that the petitioner retired from service on superannuation on 31st January, 2024. Subsequent thereto, on 16th April, 2025 as per direction of the respondent authorities he deposited the overdrawn salary.

12. In view of the above proposition of Hon'ble Supreme Court in *Rafiq Masih (supra)*, as the direction for deposit of the overdrawn salary has been made after more than a year of retirement of the petitioner, hence the same is impermissible under law.

13. Accordingly, the respondent No.5, Director of Pension and Provident Fund and Group Insurance, Government of West Bengal and the concerned Treasury Officer are directed to release the said amount of Rs.1,79,443/- together with interest @ 8% per annum in favour of the petitioner from the date of

deposit till the date of payment. Such payment be made within a period of 12 weeks from the date of communication of this order.

14. With the above direction, the writ petition being **WPA 19100 of 2025** stands disposed of.

15. Since no affidavits have been called for, the allegation made in the writ petition is deemed to be not admitted.

16. Interim order, if any, stands vacated.

17. All connected applications, if any, stand disposed of.

18. There shall be no order as to costs.

19. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

20. Urgent Photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)